

Midcontinent Independent System Operator, Inc.

FERC FPA Electric Tariff

Tariff Title: Midwest ISO Agreements

Effective 06/09/2015

Tariff Record Title: SA 2774 : ATC-City of Cedarburg Common Facilities Agreement

Option Code: A

SA 2774 ATC-CITY OF CEDARBURG CFA VERSION 31.0.0

EFFECTIVE 06/09/2015

ORIGINAL SERVICE AGREEMENT NO. 2774

COMMON FACILITIES AGREEMENT

entered into by and between

City of Cedarburg, Wisconsin

And

American Transmission Company, LLC

## COMMON FACILITIES AGREEMENT

THIS COMMON FACILITIES AGREEMENT ("Agreement") is entered into as of January 25, 200~~8~~<sup>8</sup> by and between, the City of Cedarburg, Wisconsin, acting by and through its Utility Commission ("Distribution Utility") and American Transmission Company LLC ("ATCLLC"), a Wisconsin limited liability company (collectively, the "Parties"). Distribution Utility and ATCLLC are referred to individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, Distribution Utility and ATCLLC each own "joint use" substations that contain facilities owned by both Parties, including facilities that are used and useful to both Parties (as defined below); and

WHEREAS, the Parties desire to establish in this Agreement the allocation of cost responsibility for the operation and maintenance of Common Facilities at joint use substations; and

WHEREAS, the Parties desire to provide in this Agreement for a method of requesting, performing and compensating for improvements and replacements of Common Facilities at joint use substations.

NOW, THEREFORE, in consideration of promises and mutual obligations set forth in this Agreement, the Parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions, Generally

Unless defined in this Agreement, the definition of each capitalized term used in this Agreement shall be the same as the definition for that term set forth in the Operating Agreement of ATCLLC, or the Asset Contribution Agreements between ATCLLC and Distribution Utility.

## **1.2 Special Definitions**

The following defined terms used in this Agreement shall be defined as set forth below:

### **1.2.1 Assignable Facilities**

“Assignable Facilities” are those facilities at a Joint Use Substation that belong to and serve a single owner and are not Common Facilities and are used and useful to such single owner.

### **1.2.2 Common Facilities**

“Common Facilities” are those facilities at a Joint Use Substation that are used and useful to both Parties. Common Facilities include, but are not limited to batteries, structures that house equipment, ground grids, fences, gravel areas, parking areas, landscaping, access roads, yard lighting, shielding, and screening. Common Facilities do not include land, land rights or Assignable Facilities, excluding those Common Facilities deemed to be of De minimis Use.

### **1.2.3 Common Facilities Owner**

“Common Facilities Owner” means, unless otherwise agreed to in writing by the Parties, the Party that owns the greater value (based on original installed cost) of Assignable Facilities at the Joint Use Substation as of the date Distribution Utility transferred its Transmission Facilities to ATCLLC, or the date the substation became a

Joint Use Substation (whether by designation or completion of construction), whichever date is later.

#### 1.2.4 Costs

“Costs” means all direct and indirect costs incurred by a Party. Direct and indirect costs include but are not limited to labor costs with overheads which shall include labor costs for tasks such as recording costs and invoicing; the actual cost of materials and supplies; return of and on the cost of property employed; and payments to contractors (without additional charges or markups), plus all overheads directly associated with any and all of these costs. Distribution Utility’s Costs shall be calculated using the rates and charges set forth on Schedule 1. The rates and charges set forth on Schedule 1, Section A shall apply to those instances when Distribution Utility is performing work on Distribution Facilities or other assets owned by Distribution Utility, such as Common Facilities, for which ATCLLC is responsible to make payment to Distribution Utility. The rates and charges set forth on Schedule 1, Section B shall apply in those instances in which Distribution Utility is performing work on Transmission Facilities or other assets owned by ATCLLC, such as Common Facilities, for which ATCLLC is responsible to make payment to Distribution Utility. ATCLLC’s Costs shall be determined using the rates and charges set forth on Schedule 2, Section A or Section B. The rates and charges set forth on Schedule 2, Section A shall apply to those instances when ATCLLC is performing work on Transmission Facilities or other assets owned by ATCLLC, such as Common Facilities, for which Distribution Utility is responsible to make payment to ATCLLC. The rates and charges set forth on Schedule 2, Section B shall apply in those instances in which ATCLLC is performing work on

Distribution Facilities or other assets owned by Distribution Utility, for which Distribution Utility is responsible to make payment to ATCLLC. The rates and charges set forth on Schedule 1 may be changed from time to time by the Distribution Utility and the rates and charges set forth on Schedule 2 may be changed from time to time by ATCLLC; however, any such changes must be communicated to the other Party in writing within fourteen (14) days of such change or within the next billing cycle of such change. If the rates and charges are changed, then the Party making such change shall provide a revised Schedule to the other Party reflecting such change prior to such rates and charges becoming effective for any work under this Agreement.

#### **1.2.5 De minimis Use**

“De minimis Use” shall describe the situation where the used and useful benefit of a Common Facilities Owner’s asset is of minimal or insignificant value or benefit to a Joint Use Substation Tenant and therefore does not warrant proportionate cost allocation by the Common Facilities Owner. Examples may include, but are not limited to, spare fuse storage in a control house, a control wire in a trench, conduit, and/or cable tray or the presence of metering for balancing authority or revenue collection purposes.

#### **1.2.6 Distribution Facilities**

“Distribution Facilities” shall mean those Assignable Facilities owned by Distribution Utility that are used for the distribution of electricity at nominal voltages that are lower than 50 kV, except that Distribution Facilities shall include transformation equipment that receives energy at voltages above 50kV and transforms the voltage at which the energy is received to a voltage below 50kV.

#### **1.2.7 Good Utility Practice**

“Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition and which reflect and are consistent with the mandatory reliability standards of the North American Reliability Corporation (NERC) or and Regional Entities authorized by NERC to establish and enforce reliability standards applicable to each Party. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region and which are acceptable under the mandatory reliability standards of NERC or any Regional Entity having delegated responsibility for the facilities subject to this Agreement.

#### **1.2.8 Joint Use Substation**

“Joint Use Substation” means a substation at which Assignable Facilities are owned and operated by each Party. The Joint Use Substations covered by this Agreement are listed in Schedule 3, which schedule may be amended from time to time by mutual agreement to reflect new Joint Use Substations and changes in designations of existing Joint Use Substations.

#### **1.2.9 Joint Use Substation Tenant**

“Joint Use Substation Tenant” means an entity who is not the Common Facilities Owner. There may be more than one Joint Use Substation Tenant associated with a Joint Use Substation.

#### **1.2.10 Joint Use Substation Tenant’s Allocable Share**

The Initial “Joint Use Substation Tenant’s Allocable Share” shall be the percentage derived by dividing the Joint Use Substation Tenant’s total Assignable Facilities value (at original cost) by the total value (at original cost) of all Assignable Facilities at each substation determined using the original costs as of June 30, 2006. Thereafter, any changes to the Joint Use Tenant’s Allocable Share shall be determined in accordance with Article 4.

#### **1.2.11 Net Book Investment Value**

“Net Book Investment Value” means original cost less accumulated book depreciation.

#### **1.2.12 Return On and Of Billing**

“Return On and Of Billing” means an annual billing of a Joint Use Substation Tenant by the Common Facilities Owner pursuant to Article 4 of this Agreement of the following amounts:

(a) “Return on investment” shall be calculated as follows: by multiplying the total Net Book Investment Value of the Common Facilities times the overall pre-tax rate of return allowed the Common Facilities Owner by the governmental agency with jurisdiction over Common Facilities Owner’s rates in its most recent rate order times the Joint Use Substation Tenant’s Allocable Share; and



(b) “Return of investment” shall be calculated as follows: by using the depreciation rate most recently established for the Common Facilities by the governmental agency with jurisdiction over Common Facilities Owner’s rates in its most recent depreciation order, determine the annual depreciation of the Common Facilities, then multiply by the Joint Use Substation Tenant’s Allocable Share.

#### **1.2.13 Service**

“Service” means operation and maintenance of Common Facilities performed by the Common Facilities Owner under Article 4 of this Agreement and Common Facilities improvements and expansions performed by the Common Facilities Owner under Article 5 of this Agreement.

#### **1.2.14 Transmission Facilities**

“Transmission Facilities” shall mean those Assignable Facilities owned by ATCLLC and used by it for (i) the transmission of electric energy at voltages that are 50 kV and higher (but does not include transformation equipment otherwise defined as Distribution Facilities if the function is to transform the voltage to a voltage less than 50kV) or (ii) the transmission of electricity regardless of the nominal voltage at which such facility is designed to operate or does operate, if the facilities are designated by the Public Service Commission of Wisconsin as transmission facilities.

#### **1.2.15 Transmission System**

“Transmission System” shall mean the system of facilities for the transmission of electric energy that is owned by ATCLLC.

## ARTICLE 2

### **TERM**

This Agreement shall be effective from the date hereof ("Effective Date") and shall continue in effect until terminated upon not less than one (1) year's written notice by one Party to the other; provided, however, that the provisions of this Agreement shall survive termination as to any Services being performed through and including the effective date of termination, and that the respective parties shall agree to work collaboratively and cooperatively to address any forward looking operational and/or ownership issues.

## ARTICLE 3

### **REQUIRED REGULATORY APPROVALS AND REPORTING**

The effectiveness of this Agreement is expressly conditioned upon the receipt by the Parties of all permits, regulatory authorizations and regulatory approvals that are required in order for the Parties to enter into and perform their obligations under this Agreement in a form acceptable in the reasonable judgment of the Party affected thereby.

## ARTICLE 4

### **OPERATION AND MAINTENANCE**

#### **4.1 Assignable Facilities**

Each Party is responsible for the operation and maintenance of its Assignable Facilities at its sole cost.

#### **4.2 Common Facilities**

The Common Facilities Owner shall perform or have performed all operation and maintenance of Common Facilities as required by and in accordance with Good Utility

Practice and any applicable mandatory reliability standards. At the end of each year, the Common Facilities Owner shall calculate and bill each Joint Use Substation Tenant, and each Joint Use Substation Tenant shall pay the Common Facilities Owner, the Joint Use Substation Tenant's Allocable Share of the Common Facilities Owner's Costs of operating and maintaining Common Facilities. The amount to be billed by the Common Facilities Owner shall be determined by multiplying the Joint Use Tenant's Allocable Share times the Costs associated with operating and maintaining the Common Facilities at each Joint Use Substation.

**4.3 Annual Redetermination of Joint Use Tenant's Allocable Share and Return Of and On Billing Amounts.**

Beginning the year after the initial year of this Agreement, the Parties shall exchange accounting information necessary to determine the Joint Use Tenant's Allocable Share in the manner provided for in Section 1.2.10 based on the values as of June 30 of such year. Thereafter, by August 15 the Parties shall agree upon the Joint Use Substation Tenant's Allocable Share. The Joint Use Substation Tenant's Allocable Share shall be applicable to all billings made beginning on or after January 1 of the succeeding year. The Return Of and Return On Billing calculations set forth in Section 1.2.12 shall be adjusted accordingly using values determined as of June 30 of each year and such adjusted Return Of and Return On Billing calculations shall be applicable to all billings made beginning on or after January 1<sup>st</sup> of the succeeding year.

**ARTICLE 5**

**COMMON FACILITIES IMPROVEMENTS, REPLACEMENTS AND  
SERVICES**

### **5.1 Common Facilities Improvements**

When existing Common Facilities must be improved or replaced by reason of degradation or failure due to use over time, or the Parties mutually agree upon an improvement or replacement of Common Facilities, the Parties shall cooperate in good faith on the design, engineering, scheduling and installation of the improvement or replacement. The functionality of the improved or replaced Common Facilities shall be equal to or greater than their original functionality unless the Common Facilities Owner and Joint Use Substation Tenants agree otherwise. The Common Facilities Owner shall perform or have performed the improvement or replacement in accordance with Good Utility Practice and any applicable mandatory reliability standards and will own the improved or replaced Common Facilities when they are completed. Each Joint Use Substation Tenant shall pay its Joint Use Substation Tenant's Allocable Share of the Common Facilities Owner's Costs of the improvement or replacement to the Common Facilities Owner through the Return On and Of Billing.

### **5.2 Common Facilities Improvements or Replacements Initiated by the Common Facilities Owner**

If the Common Facilities Owner determines that a modification to its Assignable Facilities or a change in its business needs or operating requirements requires an improvement or replacement of Common Facilities at a Joint Use Substation, it shall provide reasonable notice to the Joint Use Substation Tenants of that Joint Use Substation. The Parties shall cooperate in good faith on the design, engineering, scheduling and installation of the improvement or replacement. The Common Facilities Owner shall perform or have performed the improvement or replacement in accordance

with Good Utility Practice and any mandatory reliability standards and will own the improved or replaced Common Facilities when they are completed. Each Joint Use Substation Tenant shall pay its Joint Use Substation Tenant Allocable Share of the Common Facilities Owner's Costs of the improvement or replacement to the Common Facilities Owner through Return On and Of Billing.

**5.3 Common Facilities Improvements or Replacements Initiated by a Joint Use Substation Tenant**

If a Joint Use Substation Tenant determines that a modification to its Assignable Facilities or a change in its business needs or operating requirements requires an improvement or replacement of Common Facilities at a Joint Use Substation, the Joint Use Substation Tenant may request the Common Facilities Owner to perform the improvement or replacement by entering into a Facilities Construction Agreement between the Common Facilities Owner and ATCLLC. The Facilities Construction Agreement shall govern the request except as follows:

5.3.1 When a Joint Use Substation Tenant reimburses the Common Facilities Owner for the installation, improvement or replacement of Common Facilities, the value of such Common Facility installation, improvement, or replacement shall be entered on the books of the Common Facilities Owner at zero net book value. The installation, improvement or replacement shall not be reflected in the Common Facilities Owners' Return On and Of Billings.

5.3.2 Any reimbursement shall be made at a time that is mutually agreeable to the Common Facilities Owner and the Joint Use Substation Tenant. Upon receipt of such reimbursement, the Common Facilities Owner shall assume responsibility for any and all of its own tax liabilities resulting from such reimbursement.

## ARTICLE 6

### RIGHT TO AUDIT AND DISPUTE RESOLUTION

#### 6.1 Audits

The Party performing the work (Performing Party) shall maintain and retain for such time as Party requesting the work be performed (Requesting Party) may reasonably direct, but not for longer than seven (7) years, the books and other records needed to document the costs Performing Party incurs as a result of fulfilling its obligations under this Agreement. Performing Party shall respond to any reasonable request from Requesting Party for information related to a Cost charged by Performing Party to Requesting Party by providing Requesting Party the information reasonably needed by Requesting Party to verify the Cost in question. From time to time, Requesting Party may conduct, and Performing Party shall permit Requesting Party to conduct or cause to be conducted by its authorized agents, at Requesting Party's expense, audits of the books and records of Performing Party that relate to the Services provided under this Agreement. Such audits will be conducted at reasonable mutually agreed upon times, provided that Requesting Party must contest invoices within one (1) year of receipt and must complete any audit relating to a contested invoice within a reasonable period of time thereafter. Any adjustment identified to be made as a result of an audit and that is payable under Schedule 1 or Schedule 2 shall be made to the billing statement next issued following the conclusion of the audit.

#### 6.2 Disputes

Disputes arising out of or relating to this Agreement shall first be discussed by the respective Managers for the Common Facilities Owner and the Joint Use Substation Tenant immediately responsible for the supervision of the departments in which the

dispute has arisen. Any dispute that cannot be resolved at that level shall be referred to next level. Any dispute that cannot be resolved within a reasonable period of time after the date of submission of the dispute at the second level shall then be referred to the most senior level of the Common Facilities Owner and the Joint Use Substation Tenant. If a satisfactory resolution is not achieved at that level, the Parties shall submit to non-binding mediation, prior to resorting to other remedies available at law or equity.

#### ARTICLE 7

##### **FORCE MAJEURE**

To the extent performance by either Party to this Agreement is prevented or delayed due to circumstances beyond the reasonable control of the Party (such circumstances shall be hereinafter referred to as events of "Force Majeure"), such Party shall promptly give written notice to the other Party, and shall exercise all commercially reasonable efforts to overcome the effects of the event of Force Majeure. The written notification shall include a full and complete explanation of the event of Force Majeure, and the actions such Party is taking or proposes to take to overcome the event of Force Majeure. Either Party upon receipt of the written notice called for under this paragraph shall have the right, upon written notice to the affected Party, to obtain alternate contractors to perform any work required under this Agreement during any event of Force Majeure that prevents or delays the other Party's performance for a period of ten (10) consecutive days or more.

#### ARTICLE 8

##### **LIMITATION OF LIABILITY**

With respect to claims by and between the Parties under this Agreement, the measure of damages at law or in equity in any action or proceeding shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived and neither Party shall be liable in statute, contract, in tort (including negligence), strict liability, warranty or under any other legal theory or otherwise to the other Party, its agents, representatives, and/or assigns, for any special, incidental, punitive, exemplary or consequential loss or damage whatsoever, including but not limited to, loss of profits or revenue on work not performed, for loss of use of or under-utilization of the other Party's facilities, loss of use of revenues, or loss of anticipated profits, resulting from either Party's performance or non-performance of an obligation imposed on it by this Agreement, without regard to the cause or causes related thereto, including the negligence of any party. The Parties expressly acknowledge and agree that this limitation shall apply to any claims for indemnification under Article 9 of this Agreement. The provisions of this Article shall survive the termination or expiration of this Agreement.

## ARTICLE 9

### INDEMNITY

#### 9.1 Indemnification Obligation

Subject to the provisions of Article 8, a Party ("Indemnifying Party") shall indemnify, hold harmless and defend the other Party ("Indemnified Party"), and its officers, directors, employees, affiliates, managers, members, trustees, shareholders, agents, contractors, subcontractors, affiliates' employees, invitees and successors, from and against any and all claims, demands, suits, obligations, payments, liabilities, costs,



losses, judgments, damages and expenses (including the reasonable costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements, and compromises relating thereto, reasonable attorneys' and expert fees and reasonable disbursements in connection therewith) for damage to property, injury to any person or entity, or death of any individual, including the Indemnified Party's employees and affiliates' employees, or any other third parties, to the extent caused wholly or in part by any willful act or omission, or grossly negligent act or omission by the Indemnifying Party or its officers, directors, employees, agents, contractors, subcontractors and invitees arising out of or connected with the Indemnifying Party's performance or breach of this Agreement, or the exercise by the Indemnifying Party of its rights under this Agreement; provided, however, that the provisions of this Article shall not apply if any such injury, death or damage is held to have been caused by the negligence or intentional wrongdoing of the Indemnified Party, its agents or employees. In furtherance of the foregoing indemnification and not by way of limitation, the Indemnifying Party hereby waives any defense it otherwise might have under applicable workers' compensation laws. Notwithstanding anything in this Agreement to the contrary, no provision of this Agreement is intended or shall be construed to be a waiver by the City of Cedarburg of Wisconsin Statutes §893.80 or any other applicable limits on municipal liability in connection with claims made by third parties.

## **9.2 Indemnification Procedures**

A Party seeking indemnification from the other Party under this Agreement shall give the other Party notice of such claim as soon as practicable but in any event on or before the thirtieth (30<sup>th</sup>) day after the Party's actual knowledge of such claim or action.

Such notice shall describe the claim in reasonable detail, and shall indicate the amount (estimated if necessary) of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim for which indemnification is sought under this Agreement without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld or delayed. Each Party's indemnification obligation will survive expiration, cancellation or early termination of this Agreement.

## ARTICLE 10

### INSURANCE

#### 10.1 Insurance Requirements

(a) The Parties agree to maintain, at their own cost and expense, general and automobile liability, worker's compensation, and other forms of insurance relating to their operations for the life of this Agreement in the manner, and amounts, at a minimum, as set forth in Exhibit 1 hereto.

(b) Where a Party has more than \$100 million in assets it may, at its option, self insure all or part of the insurances required in this Article; provided, however, the self-insuring Party agrees that all other provisions of this Article, including, but not limited to, waiver of subrogation, waiver of rights of recourse, and additional insured status, which provide or are intended to provide protection for the other Party and its affiliated and associated companies under this Agreement, shall remain enforceable. A

Party's election to self-insure shall not impair, limit, or in any manner result in a reduction of rights and/or benefits otherwise available to the other Party and its affiliated and associated companies through formal insurance policies and endorsements as specified in the above parts of this Article. The self-insuring Party agrees that all amounts of self-insurance, retentions and/or deductibles are the responsibility of and shall be borne by the self-insuring Party.

#### **10.2 Certification**

Within fifteen (15) days of the Effective Date, and thereafter upon request, during the term of this Agreement, (including any extensions), each insuring Party shall provide to the insured Party, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by such Party under this Agreement.

Certificates of insurance shall provide the following information:

- (a) Name of insurance company, policy number and expiration date;
- (b) The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of the Party maintaining such policy;
- (c) A statement indicating that the insured Party shall receive at least thirty (30) days prior written notice of cancellation or expiration of a policy, or reduction of liability limits with respect to a policy; and
- (d) A statement identifying and indicating that additional insureds have been named as required by this Agreement.

### **10.3 Copies**

At an insured Party's request, in addition to the foregoing certifications, the insuring Party shall deliver to the insured Party a copy of applicable sections of each insurance policy.

### **10.4 Policy Inspection**

Each insured Party shall have the right to inspect the original policies of insurance applicable to this Agreement at the insuring Party's place of business during regular business hours.

### **10.5 Coverage Period**

If any insurance is written on a "claims made" basis, the insuring Party shall maintain the coverage for a minimum of seven (7) years after the termination of this Agreement.

### **10.6 Waiver of Subrogation**

To the extent permitted by the insurer and commercially reasonable, each insuring Party shall obtain waivers of subrogation in favor of the insured Party from any insurer providing coverage that is required to be maintained under this Article 10, except for the coverage required under Section 10.1(a). A Party shall not be required to obtain a waiver of subrogation if the other Party is not able to obtain a waiver of subrogation from its insurance carrier.

## **ARTICLE 11**

### **SUCCESSORS AND ASSIGNS**

This Agreement and each and every of its covenants, terms and conditions, shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs,

executors, administrators, successors and permitted assigns. Distribution Utility shall not assign its rights or obligations under this Agreement without express written approval of ATCLLC, except it may assign its rights or obligations to a purchaser (or other successor) who will own all or substantially all of its Distribution Facilities and who shall then be bound by all of the provisions of this Agreement. ATCLLC shall not assign its rights or obligations under this Agreement without express written approval of Distribution Utility, except it may assign its rights and obligations to a purchaser (or an affiliate) who will own all or substantially all of its Transmission Facilities or equity interests and who shall then be bound by all of the provisions of this Agreement. No assignment of this Agreement shall be valid unless the Assignee agrees, in writing, to be bound by all the terms, conditions, and limitations of this Agreement.

## ARTICLE 12

### NOTICE

#### 12.1 Written Notice

All certificates or notices required under this Agreement shall be given in writing and addressed or delivered to the representative(s) specified in this Agreement. Notices shall be deemed received (i) upon delivery, when personally delivered; (ii) upon receipt, when sent via registered or certified mail; (iii) the next business day, when sent via overnight courier; and (iv) when sent via facsimile upon confirmation by recipient. Copies of all general correspondence regarding this Agreement shall also be sent to these representative(s).

#### 12.2 Representatives to Receive Notice

Notices submitted hereunder shall be directed to the following individuals:

Notices to Distribution Utility:

Attn: Mr. Dale Lythjohan  
City of Cedarburg  
N30 W5926 Lincoln Boulevard  
Cedarburg, WI 53012-0767  
Phone: (262) 375-7655

Notices to ATCLLC:

Attn: Vice President, Legal and Secretary  
American Transmission Company, LLC  
N19 W23993 Ridgeview Parkway West  
P. O. Box 47  
Waukesha, WI 53188-1000

All other communications relating to this Agreement should be submitted to:

Chief Operating Officer  
American Transmission Company, LLC  
N19 W23993 Ridgeview Parkway West  
P. O. Box 47  
Waukesha, WI 53188-1000

### **12.3 Notification Changes**

ATCLLC or Distribution Utility may change their respective representative(s) designated to receive notice hereunder by written notice to the other Party.

## **ARTICLE 13**

### **MISCELLANEOUS**

#### **13.1 Compliance with Laws**

Throughout the term of this Agreement, each Party shall perform its obligations under this Agreement in compliance with all present and future federal, state and local statutes, ordinances, rules and regulations, including, but not limited to those pertaining to human safety, protection of property, non-discrimination, and protection of the

environment, including any and all applicable mandatory reliability standards of NERC or the delegated Regional Entity.

### **13.2 Entire Agreement**

This Agreement, together with any Exhibits and Schedules attached to this Agreement is the entire understanding of the Parties regarding the subject matter, and supersedes all prior oral or written discussions, negotiations and agreements the Parties may have had with respect to the subject matter.

### **13.3 Counterparts**

This Agreement may be executed in any number of counterparts, and each counterpart shall have the same force and effect as the original instrument.

### **13.4 Amendment**

No amendment, modification or waiver of any term hereof shall be effective unless set forth in a writing signed by the Parties.

### **13.5 Survival**

All indemnities and confidentiality rights and obligations provided for in this Agreement shall survive the cancellation, expiration or termination hereof.

### **13.6 Independent Contractor**

Each Party at all times shall be deemed to be an independent contractor and none of its employees or the employees of its contractors shall be considered to be employees of the other Party during the term of this Agreement. Neither Party shall have authority to act on behalf of the other Party or bind the other Party in any manner except as expressly set forth in this Agreement. The Parties acknowledge that neither this

Agreement nor any of its provisions are intended to create any partnership or joint venture between or among the Parties.

### 13.7 Confidentiality

(a) "Confidential Information," as used in this Section 13.7, shall mean all information or documentation disclosed or made available by either Party to the other, including but not limited to correspondence between the Parties, business plans, financial information, policies and procedures, computer programs, reports and analyses, or other information which a Party in good faith designates as a "trade secret" as that term is defined in Wis. Stat. § 134.90(1)(c) or which is designated as critical energy infrastructure information as defined in 18 C.F.R. §388.12 or which may be subject to the limitation on disclosure set forth in 18 C.F.R §358.1, *et seq.*

(b) In consideration of the disclosure by one Party of Confidential Information to the other Party, the Parties agree that each of them shall undertake in good faith to accomplish the following additional actions with respect thereto:

- (i) to use the Confidential Information for the sole purpose of fulfilling the obligations of the Parties pursuant to this Agreement;
  - (ii) to safeguard and hold in strict confidence all Confidential Information, limiting disclosure of Confidential Information to employees, contractors or agents of the receiving Party who have a need to know;
  - (iii) to protect Confidential Information from disclosure to anyone not a party to this Agreement or to whom such disclosure is limited or prohibited without the prior approval of the disclosing Party;
- and



(iv) upon the request of the disclosing Party and in any event upon cancellation or expiration of this Agreement, to return all Confidential Information, or to certify that such Confidential Information has been destroyed.

(c) Each Party retains all right, title and interest in and to any Confidential Information disclosed by the Party hereunder.

(e) In the event that either Party is required by applicable law to disclose any Confidential Information of the other Party, such Party shall promptly notify the other Party of such requirement and cooperate with the other Party to protect the Confidential Information from any disclosure not required by law.

(f) The obligations of this Section shall survive for a period of three (3) years following any expiration or termination of this Agreement.

### **13.8 Standards of Conduct**

If the performance of this Agreement requires ATCLLC to disclose information about the Transmission System to Distribution Utility, the dissemination of which is subject to FERC's Standards of Conduct requirements under 18 C.F.R. Part 358, such information, subject to Section 13.7(e) above, shall not be disclosed by Distribution Utility or ATCLLC to any persons that have not a) completed ATCLLC's Standards of Conduct training and b) have not signed an affidavit agreeing to be bound by ATCLLC's Compliance Plan and the terms of ATCLLC's Confidential Data Access Agreement. Distribution Utility employees receiving Confidential Information of ATCLLC under this Agreement understand that they are prohibited from being conduits of information to Marketers. Further, should any FERC audit of ATCLLC's compliance with the

Standards of Conduct turn up any violations of the Confidential Data Access Agreement on the part of the Distribution Utility (i.e. confidential transmission system information being passed to marketers), the Distribution Utility shall be solely liable for any and all penalties imposed by the FERC monetary and otherwise, for those violations attributed to the Distribution Utility by the FERC.

#### **13.9 No Implied Waivers**

The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assist or rely upon any such provisions, rights and remedies in that or any other instance; rather, the same shall be and remain in full force and effect.

#### **13.10 No Third-Party Beneficiaries**

This Agreement is intended to be solely for the benefit of the Parties to this Agreement and their successors and permitted assigns and is not intended to and shall not confer any rights or benefits on any third party (other than successors and permitted assigns) not a signatory hereto.

#### **13.11 Severability**

In the event that any provision of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void portion of such provision shall be deemed severable from this Agreement unless the removal of the unenforceable provision materially alters the obligations of any Party hereunder. Even if there is a material alteration in the remainder of the Agreement, the Agreement shall continue in full force and effect as if such provision was not contained in this Agreement, but the Parties shall negotiate in good faith new provisions in relation to the deleted provision

that will to the extent practicable restore the benefit of the bargain contained in such provision, and that are consistent with Good Utility Practice.

### 13.12 Governing Law


This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, with the exception of any choice of laws provisions.

### 13.13 Headings

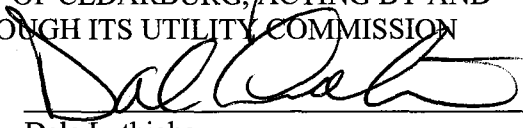
The headings as set forth herein are inserted for convenience and shall have no effect on the interpretation or construction of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives whose signatures are set forth below, effective as of the date first written above.

AMERICAN TRANSMISSION COMPANY, LLC  
By: ATC MANAGEMENT INC., its Manager

By:   
Tom Finco  
Title: Director – Customer Relations and Interconnection Services

CITY OF CEDARBURG, ACTING BY AND  
THROUGH ITS UTILITY COMMISSION

By:   
Dale Lythjohan  
Title: General Manager, Cedarburg Light and Water Commission

## Schedule 1

### Distribution Company's Cost Methodology

#### Section A

##### **Method of Calculating Costs Charged to Projects for Assets Owned by Distribution Company**

**Direct Costs:** Costs incurred by Distribution Utility that are directly attributable to the project. Such costs would include direct labor, employee expenses, material costs, outside contractors and other direct vendor billed costs including sales tax paid on vendor invoices or otherwise paid by Distribution Utility for equipment, materials or supplies included in the work performed.

##### **Indirect Costs:**

**Labor Loading** This loading covers pension and other related employee benefit costs, payroll taxes and the expense of non-productive employee time (Sick, Holiday & Vacation). This loading percentage is then applied on direct labor.

**Supervisory Loading** This loading covers costs incurred for management and supervision of employees directly involved in the project. The calculation is derived by taking the average of total supervision salary divided by total salary for project related departments only. This allocation percentage is then applied on direct labor.

**Project Administration Clearing** This is direct labor or outside services associated with capital projects which is charged to a central clearing account. Charges typically originate in administrative areas in which direct project related work is performed, in smaller increments, for numerous projects in any given week. i.e. Plant Accounting, Project Business Administration, etc. These costs are accumulated monthly and allocated to all open capital projects having charges in the preceding month.

**Administrative and General Loading** This loading covers cost incurred for administrative and general functions that support the Distribution Utility of which a portion will be allocated to the project. The calculation is derived by taking total allocable A&G expenses divided by total labor costs in non-A&G departments. This allocation percentage is then applied on direct labor. Allocable A&G expenses include those from the following departments if applicable: Corporate Management, Human Resources, Finance, Accounting, Facilities & Security, Information Technology and Corporate Services.

**Total Charges** The total charges are represented as follows:

$TC = DC + (DL * LL) + (DL * SL) + (DL * A\&G)$  where DC is Direct Costs, TC is the Total Cost, DL is Direct Labor, SL is Supervisory Loading, LL is Labor Loading, and A&G is Administrative and General Loading

## Schedule 1

### Distribution Company's Cost Methodology

#### Section B

##### **Method of Calculating Costs Charged to Projects for Assets Owned by External Parties**

**Direct Costs** Costs incurred by Distribution Utility that are directly attributable to the project. Such costs would include direct labor, employee expenses, material costs, outside contractors and other direct vendor billed costs including sales tax paid on vendor invoices or otherwise paid by Distribution Utility for equipment, materials or supplies included in the work performed.

##### **Indirect Costs:**

**Labor Loading** This loading covers pension and other related employee benefit costs, payroll taxes and the expense of non-productive employee time (Sick, Holiday & Vacation). This loading percentage is then applied on direct labor.

**Supervisory Loading** This loading covers costs incurred for management and supervision of employees directly involved in the project. The calculation is derived by taking the average of total supervision salary divided by total salary for project related departments only. This allocation percentage is then applied on direct labor.

**Project Administration Clearing** This is direct labor or outside services associated with capital projects which is charged to a central clearing account. Charges typically originate in administrative areas in which direct project related work is performed, in smaller increments, for numerous projects in any given week. i.e. Plant Accounting, Project Business Administration, etc. These costs are accumulated monthly and allocated to all open capital projects having charges in the preceding month.

**Administrative and General Loading** This loading covers cost incurred for administrative and general functions that support the Distribution Utility of which a portion will be allocated to the project. The calculation is derived by taking total allocable A&G expenses divided by total labor costs in non-A&G departments. This allocation percentage is then applied on direct labor. Allocable A&G expenses include those from the following departments if applicable: Corporate Management, Human Resources, Finance, Accounting, Facilities & Security, Information Technology and Corporate Services.

**Total Charges** The total charges are represented as follows:  
 $TC = DC + (DL * LL) + (DL * SL) + (DL * A\&G)$  where DC is Direct Costs, TC is the Total Cost, DL is Direct Labor, SL is Supervisory Loading, LL is Labor Loading, and A&G is Administrative and General Loading

## Schedule 2

### ATCLLC's Cost Methodology

#### Section A

##### **Method of Calculating Costs Charged to Projects for Assets Owned by ATCLLC**

**Direct Costs:** Costs incurred by ATCLLC that are directly attributable to the project. Such costs would include direct labor, employee expenses, material costs, outside contractors and other direct vendor billed costs including sales tax paid on vendor invoices.

##### **Indirect Costs:**

**Labor Loading** This loading covers pension and other related employee benefit costs, payroll taxes and the expense of non-productive employee time (Sick, Holiday & Vacation). This loading percentage is then applied on direct labor.

**Supervisory Loading** This loading covers costs incurred for management and supervision of employees directly involved in the project. The calculation is derived by taking the average of total supervision salary divided by total salary for project related departments only. This allocation percentage is then applied on direct labor.

**Project Administration Clearing** This is direct labor or outside services associated with capital projects which is charged to a central clearing account. Charges typically originate in administrative areas in which direct project related work is performed, in smaller increments, for numerous projects in any given week. i.e. Plant Accounting, Project Business Administration, etc. These costs are accumulated monthly and allocated to all open capital projects having charges in the preceding month.

**Administrative and General Loading** This loading covers cost incurred for administrative and general functions that support the entire company of which a portion will be allocated to the project. The calculation is derived by taking total allocable A&G expenses divided by total labor costs in non-A&G departments. This allocation percentage is then applied on direct labor. Allocable A&G expenses include those from the following departments: Corporate Management, Human Resources, Finance, Accounting, Facilities & Security, Information Technology and Corporate Services.

**Tax Indemnification** If the receipt of monies by ATC are deemed to be taxable, an additional amount shall be charged to reimburse ATC for costs associated with timing differences between the payment of tax on such amounts and the related tax deductions.

## Schedule 2

### ATCLLC's Cost Methodology

#### Section B

##### **Method of Calculating Costs Charged to Projects for Assets Owned by External Parties**

**Direct Costs** Costs incurred by ATCLLC that are directly attributable to the project. Such costs would include direct labor, employee expenses, material costs, outside contractors and other direct vendor billed costs including sales tax paid on vendor invoices.

##### **Indirect Costs:**

**Labor Loading** This loading covers pension and other related employee benefit costs, payroll taxes and the expense of non-productive employee time (Sick, Holiday & Vacation). This loading percentage is then applied on direct labor.

**Supervisory Loading** This loading covers costs incurred for management and supervision of employees directly involved in the project. The calculation is derived by taking the average of total supervision salary divided by total salary for project related departments only. This allocation percentage is then applied on direct labor.

**Project Administration Clearing** This is direct labor or outside services associated with capital projects which is charged to a central clearing account. Charges typically originate in administrative areas in which direct project related work is performed, in smaller increments, for numerous projects in any given week. i.e. Plant Accounting, Project Business Administration, etc. These costs are accumulated monthly and allocated to all open capital projects having charges in the preceding month.

**Administrative and General Loading** This loading covers cost incurred for administrative and general functions that support the entire company of which a portion will be allocated to the project. The calculation is derived by taking total allocable A&G expenses divided by total labor costs in non-A&G departments. This allocation percentage is then applied on direct labor. Allocable A&G expenses include those from the following departments: Corporate Management, Human Resources, Finance, Accounting, Facilities & Security, Information Technology and Corporate Services.

### Schedule 3

#### Joint Use Substations City of Cedarburg

##### ATC As Owner

Substation	Common Facilities Owner	Joint Use Substation Tenant
None	None	None

##### City of Cedarburg As Owner

Substation	Common Facilities Owner	Joint Use Substation Tenant
Cedarburg South	City of Cedarburg	ATC



## **Exhibit 1**

### **City of Cedarburg Light & Water Utility Insurance Coverage**

- **Excess Liability, Public Officials Errors & Omissions, & Auto Liability** **BI & PD Combined** **\$5,000,000**
- **Workers Compensation Coverage A and Employers Liability Coverage B**
  - Coverage A** **Statutory**
  - Coverage B** **BI By Accident**
  - BI by Disease – Policy Limit**
  - BI by Disease – Per Employee**